

1803.

M'Culloch, Administrator, &c. *versus* Young.

THIS was an action on the case, brought against the defendant, by *John M'Culloch*, as administrator of *Robert Parland*, under letters of administration granted by the Orphan's Court, and tested by "the register of wills for *Prince George* county," in the state of *Maryland*, on the 8th of *October* 1799, addressed to *John M'Culloch* of "*Alexandria*, in the state of *Virginia*."

The only controverted question in the cause, was submitted to the Court, all the judges being present: to wit; whether an action could be maintained in the Courts of *Pennsylvania*, under the authority of letters of administration granted in another state?

And after argument by *M. Levy*, for the plaintiff, and by *Hopkinson* for the defendant (in the course of which, 1 *Dall Rep.* 456. 1 *State Laws*, 30. *Dall. edit.* were cited):

The Court, advertng to the numerous instances, both since and before the revolution, in which such suits were maintained, unanimously pronounced,

Judgment for the plaintiff.

Commonwealth *versus* M'Kissick *et al.*

ON the 15th of *March* 1802, a rule was obtained upon the receiver-general, which was afterwards extended to the secretary of the land-office, to show cause why a *mandamus* should not issue, commanding them to receive a certain certificate, in payment for city lots, located by the late *Thomas Billington*.

The application for the rule, was founded upon an act of the General Assembly, passed on the 9th of *March* 1796, (4 *vol. p.* 16. *Dall. edit.*), which contains the following enacting clause:

Sect. 1. "*Be it enacted, &c.* That it shall and may be lawful "for the Board of Property, and they are hereby enjoined and "required, to proceed upon the reports of the Commission- "ers appointed by the act passed the twenty-eighth day of " *March*, one thousand seven hundred and eighty-seven, entitled "An Act for ascertaining and confirming to certain persons, called Connecticut Claimants, the lands by them claimed "within the county of *Luzerne*," which have been filed in the "office of the Secretary, and ascertain, as nearly as they can, "from the documents so placed in the Secretary's office, and "from such further evidence as they may deem necessary, and "which

“ which shall be produced to them, what sum or sums ought, on 1803.
 “ the principles of the aforesaid law, to be allowed to the res-
 “ pective owners; and the Receiver-General shall thereupon de-
 “ liver a certificate of such sum or sums to the respective owners
 “ and enter a credit in his books, for the same, which may be
 “ transferred to any person, and passed as credit, either in taking
 “ out new warrants in any part of the state where vacant land
 “ may be found, or paying arrearages on former grants: *Provided*
 “ *nevertheless*, That the value of the land, for which such certi-
 “ ficates are so to be delivered to the aforesaid claimants, shall
 “ not be estimated otherwise than if the same had been made by
 “ the Board of Property immediately after the report of the
 “ aforesaid Commissioners, in pursuance of the law herein be-
 “ fore mentioned: *And provided further*, That the claimants,
 “ who are by this act intended to be compensated, shall, at the
 “ time of receiving the certificates aforesaid, release to the com-
 “ monwealth their respective claims to the lands, for which they
 “ shall receive compensation.”

Thomas Billington purchased several certificates, which had been issued under the authority of this act, and tendered them in payment, for warrants to be located on certain lots in the city of *Philadelphia*, which he alleged to be “*vacant land*.” The legislature having granted all the unappropriated city lots to the inspectors of the prison of *Philadelphia*, for public uses, the inspectors employed counsel, to oppose the rule for issuing a *mandamus*.

Accordingly, *Dallas*, in showing cause against the rule, stated two points, for the consideration of the Court: 1st. Whether upon a just construction of the act of *March 1796*, and acts *in pari materia*, the right of location could apply to land within the boundaries of the city of *Philadelphia*. And 2d. Whether, in the strictest sense of interpretation, city lots could be regarded as *vacant land*.

The act of *March 1796* is ingrafted upon the act of the 28th of *March 1787*, usually called “the confirming law.” 4 *State Laws*, 274. (*old edit.*) which, however, had been repealed by the act of the 1st of *April 1790*. 2 *State Laws*, 786. *Dall. edit.* It was expressly intended to entitle those *Pennsylvania* claimants, who had complied with the terms of the confirming law, “while the said law was in existence, to the benefits of the same.” *Preamble*, 4 *State Laws*, 16. *Dall. edit.* What, then, were the benefits conferred on *Pennsylvania* claimants by the confirming law. A right to an equivalent, for the land they surrendered, which might be taken “*either in the old, or new purchase*, at the option of the claimant.” 4 *vol. State Laws*, 274. s. 9. (*old edit.*) And the act of *March 1796* did not profess to enlarge, nor has it, in terms, enlarged the right thus conferred. Besides, the act
of

1803. of *March 1796*, evidently restricts the location, under the *Wyoming* certificates, to those lands, for which the land-officers were previously authorised to grant warrants; and no authority was ever given to the land-officers to sell city lots, till the act of the 5th of *April 1797*. 4 vol. 165. *Dall. edit.*

Here, *Dallas* was stopped by the Court, who declared, that they could not conjecture upon what ground the rule was tenable; and desired to hear the opposite counsel. *Ingersoll* and *Rawle*, however, acknowledged, that they saw the subject in a point of view different from that, in which it was presented, when they made the motion; and declined any further argument.

By the COURT: Let the rule be discharged.

Crousillat *versus* Ball.

CASE, on a policy of insurance upon ship and cargo, containing a warranty against seizure or detention, for any illicit, or prohibited, trade. (1) It appeared, in evidence, that the vessel and cargo were owned by the plaintiff, and were insured on a voyage from *Philadelphia* to *Cape Francois*; thence to *New Orleans*; thence back to the *Cape*; and from the *Cape* back to *Philadelphia*. When the vessel had arrived at the *Cape*, on the return voyage, war had broken out between *Great Britain* and *France*; and the calamities of *St. Domingo* compelled a number of its inhabitants, to seek an asylum in the *United States*. The captain of the vessel (who was addressed to merchants at the *Cape*, and only in case of their absence was entrusted with the disposition of the cargo) undertook to cover, as *American* property, a considerable quantity of coffee and cash, belonging to two of the fugitive *Frenchmen*; under a bargain, that they should pay to the owner of the ship a certain sum for passage money, and for the freight of the coffee; and to the captain, for his own separate emolument, 50 half-johannes in hand for covering the cash, with a contingent of 200 half-johannes more, on its safe arrival in the *United States*; and a sum equal to the freight, for covering the coffee. The vessel was captured and carried into *Jamaica*, and both vessel and cargo libelled as prize, in the Court of Vice-Admiralty. The captain filed a claim, for the ship, and the plaintiff's part of the cargo, and for freight on the covered

(1) This cause had been tried twice before, upon a declaration, containing a single count, charging the loss to have happened by the capture, arrest, and detention of a foreign prince. On the first trial, the jury could not agree; and on the second trial a special verdict was found, but so imperfectly, that judgment could not be rendered upon it. A *venire facias de novo* was, therefore, awarded; and the plaintiff had leave to add a count to his declaration, averring the loss to have happened by the barratry of the master; on which point new evidence was now given.